

Administrative Notice DMMA-06-2007

TO: All DMMA Staff

DATE: April 26, 2007

SUBJECT: Transfer of Assets

BACKGROUND

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in section 1917(c) (1) of the Social Security Act affecting Long Term Care services and supports.

DISCUSSION

The DRA contains a number of provisions necessitating changes to Delaware rules. Previously States were required to review assets of Medicaid applicants for a period of thirty-six months, or sixty months if a trust was involved, prior to application. This period is known as the "look-back period". The DRA lengthens the look-back period to five years, or sixty months, for all assets (income and resources) transferred on or after February 8, 2006.

The look-back period for all applications that have a transfer of assets that occurred prior to February 8, 2006 is 36 months, or 60 months if a trust is involved.

The look-back period for all applications that have a transfer of assets on or after February 8, 2006 is 60 months.

The DRA also amends the start date of an ineligibility period for all transfers made on or after February 8, 2006. The beginning date of a penalty period will be based on the later of:

- the first day of the month in which the assets were transferred; OR
- the date on which the individual is eligible for medical assistance under the State plan **and** is receiving institutional level care services that would be covered by Medicaid if not for the imposition of the penalty period.

A new penalty period cannot begin until the expiration of any existing periods of ineligibility.

For transfers that occurred prior to February 8, 2006 the penalty period will begin on the first day of the month in which the transfer took place.

Prior to enactment of the DRA, States had the option of not imposing a penalty for transfers that were less than the State's average monthly cost to a private patient of nursing facility services in the State. The DRA prohibits a State from disregarding any fractional period of ineligibility. States must impose partial months of ineligibility. This provision is effective for payment made under title XIX of the Social Security Act for calendar quarters beginning on April 1, 2006, and thereafter.

Included in the DRA is the authority for States to accumulate multiple transfers into one penalty period. States may treat the total cumulative values of all uncompensated transfers made within the look-back period as a single transfer and calculate a single period of ineligibility. This provision applies to all applications filed on or after April 1, 2006 and had a transfer of assets/income on or after February 8, 2006.

ACTION REQUIRED

- Determine if a transfer of assets/income took place
- Determine date of transfer(s)
- Identify the look back period (36 or 60 months)
- Obtain necessary verifications in relationship to the transfer(s)
- Provide individuals the opportunity to formally rebut (see DSSM 20350.13)
- If rebuttal is successful the transfer will not have an effect on LTC eligibility
- If transfer is not successfully rebutted apply pre DRA rules to transfers that were made prior to February 8, 2006 OR apply DRA rules to transfers that were made on or after February 8, 2006
- Inform individuals of the undue hardship exception (see DSSM 20350.11)
- Determine if undue hardship waiver will be granted
- Impose penalty period as applicable if undue hardship waiver is not granted
- Review DSSM policy 20350 in its entirety

DIRECT INQUIRIES TO

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Signed - April 26, 2007_____

HARRY B. HILL, DIRECTOR
DIVISION OF MEDICAID & MEDICAL ASSISTANCE